IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
REVIEW PETITION NO.80 OF 2005
IN
WRIT PETITION NO.2151 OF 1990

Union of India & Anr.....Petitioners
Versus
Shri N.N.Joshilkar.....Respondents

Mr. S.S. Pakale with Mr. Y.S. Bhate, for the Petitioners
Mr. V.K. Pradhan, for the respondent.

CORAM: F.I. REBELLO &
S.R.SATHE, **JJ.**
DATE : 2nd February,2006

P.C.:

. This review petition is preferred against the order dated 5th July, 2004. There is an application for condonation of delay. Considering the controversy we are hearing both the matters together.

2. It is contended that this Court in order dated 5thh July, 2004 had noted that nothing had been brought to its attention as to whether the petitioner was punished by an enquiry held or he was exonerated or any order was passed in the matter of enquiry and in these circumstances the period of 131 days will have to be included to the qualifying service. By the review petition the petitioners have produced material to indicate that departmental enquiry was held and punishment was imposed and that is so recorded in the records maintained and consequently that period of 131 days cannot be considered for computing the period for completion of 10 years of service.

3. The second aspect was as to how the period of confinement could be excluded. It also observed that if the period was excluded the petitioner will be completing 10 years of qualifying service. From the record it is now apparent that the confinement was imposed as and by way of punishment. In other words therefore, the respondent continued to be in employment and had to suffer the consequences of the confinement and as such it cannot be treated as service not on duty. Under the Rules in force the Respondent could have been fined and also he could have been confined to quarter guard, or increment could have been stopped. It does not mean that in all other cases except confinement the period could be included in service. Therefore, we are clearly of the opinion that in the absence of any rule to the contrary the confinement is merely a punishment and as such that period will have to be considered.

4. The respondent joined on 30th June, 2965. The respondent was discharged on the ground of being medically unfit on 2nd September, 1975 on account of an injury to respondent suffered while representing the petitioners respondents in sports. In other words that period of service will have to be added for counting 10 years. The period of suspension is from 13th October, 1970 to 22nd February, 1971 as worked out by the department which works out to 131 days. The total period of confinement is 42 days and leave without pay is 23 days.

5. The service record indicates that the entry was made in the book on 20th February, 1971. That entry could have been made if punishment was imposed on that day. The original record of issuing the order of punishment has not been disclosed. Once that be the case treating the order of suspension from 13th October, 1971 to 20th February, 1971 the period of suspension would be from 13th October, 1971 to 20th February, 1971. If these periods are taken out, period of suspension would be reduced to 129 days and correspondingly the period of confinement and leave without pay would be more than 129 days. That being the case the petitioner would have completed 10 years of service.

6. We may also note that the Respondetn suffered an injury while representing the review applicants in Kabbadi team. This by itself ought to have been weighed with the Review Applicants while considering the case of the Respondent. Apart from that, we are clearly of the opinion that the respondent has completed 10 years of service and consequently was entitled to pension and that being the case we find no reason to recall our order except to the extent clarifying that the contentions in so far as the period of suspension is concerned. With the above observation Review Petition as well as the application for condonation of delay are disposed of.

(F.I.REBELLO, J.)

(S.R. SATHE,J.)